

REMARKS

Claims 1-22 are pending. Claims 1, 3, 5, 9, 10, 13 and 22 are amended with this response. Reconsideration of the application is respectfully requested for at least the following reasons.

I. REJECTION OF CLAIMS 3, 5, 9, 15, 16, 18-20, AND 22 UNDER 35 U.S.C.

§ 112

Claims 3, 5, 9, 15, 16, 18-20, and 22 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter the applicant regards as the invention. Withdrawal of the rejection of claims 3, 5, 9, 15, 16, 18-20, and 22 is respectfully requested for at least the following reasons.

Claims 3, 5, 9, and 22 have been amended to remove the term "about". Therefore, claims 3, 5, 9, and 22 are believed to be definite, and withdrawal of the rejection of claims 3, 5, 9, and 22 is respectfully requested.

Further, the office action alleges that "[i]n claim 15, the limitation beginning with setting an IPG is confusing and unclear as written." The applicant respectfully disagrees with this assertion. The term "setting" is a common term used and understood meaning by those skilled in the art. It is the present participle of the verb "set", which means, to put into a specified state. Here the invention of claim 15 is putting an IPG modified value into the specified state of the IPG current value. As such, claim 15 is believed to be definite in its present form, and no amendment is deemed necessary. Consequently, dependent claims 16 and 18-20 are believed to be in a condition for allowance. Therefore withdrawal of the rejection of claim 15 and its dependent claims is respectfully requested. If the rejection is maintained, we respectfully request a specific explanation as to why the term "setting" is indefinite and confusing.

II. REJECTION OF CLAIMS 1-6, 8-11, and 13-22 UNDER 35 U.S.C. § 102(b)

Claims 1-6, 8-11, and 13-22 are rejected under 35 U.S.C. §102(b) as being anticipated by Ramakrishnan (US 5,418,784). Reversal of the rejection is respectfully requested for at least the following reasons.

Please note the following citations concerning claims rejected under 35 U.S.C. §102(b) when considering reversal of the rejection:

A single prior art reference anticipates a patent claim only if it ***expressly or inherently describes each and every limitation set forth in the patent claim.*** Trintec Industries, Inc. v. Top-U.S.A. Corp., 295 F.3d 1292, 63 USPQ2d 1597 (Fed. Cir. 2002); See Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). ***The identical invention must be shown in as complete detail as is contained in the claim.*** Richardson v. Suzuki Motor Co., 868 F.2d 1226, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989) (emphasis added).

- i. Ramakrishnan does not disclose a determiner that generates an IPG value that is a function of programmable parameters, as in the amended claim 1.***

Claim 1 was rejected under 35 U.S.C. § 102(b) as being anticipated by Ramakrishnan. **Withdrawal of the rejection of amended claim 1 and its respective dependent claims is respectfully requested** for at least the following reasons. The invention of amended claim 1 specifically states that a dynamic determiner generates an IPG value that is a function of a collision count and ***programmable parameters***, which include at least one of: a range of IPG values; a convergence time; and a stable state time. **Ramakrishnan does not “expressly or inherently describe”** generating an IPG value using both collision counts and at least one of these programmable parameters. Further, **the identical invention, is not “shown in as complete detail”** (or any detail) in Ramakrishnan as contained in amended claim 1.

The invention of amended claim 1 details a dynamic IPG determiner that dynamically generates an IPG value that is a function of collision counts and ***programming parameters***, which may include at least one of: a range of IPG values; a

convergence time; and a stable state time. In contrast, the Ramakrishnan reference does not disclose or suggest these **programmable parameters**, and consequently, does not include these **programmable parameters** when generating an IPG value. As alleged in the Office Action, Ramakrishnan does refer to a function that automatically increments an IPG value by applying collision counts and a step value (see column 4, lines 2-17, and column 8, lines 37-45). However, **the Ramakrishnan method does not use the programmable parameters described in claim 1 to modify the function when generating an IPG value.**

Therefore, Ramakrishnan does not disclose all aspects set forth in claim 1. Accordingly, withdrawal of the rejection of claim 1 and its respective dependent claims is respectfully requested.

ii. Ramakrishnan does not disclose a network system configured to dynamically generate IPG values according to programmable parameters when generating IPG values, as in amended claim 10.

Claim 10 was rejected under 35 U.S.C. § 102(b) as being anticipated by Ramakrishnan. **Withdrawal of the rejection of amended claim 10 and its respective dependent claims is respectfully requested** for at least the following reasons. The invention of amended claim 10 specifically states that one or more network stations dynamically generate IPG values according to collision counts and **programmable parameters**. As described above, **Ramakrishnan does not “expressly or inherently describe”** generating an IPG value using both collision counts and the **programmable parameters** described in amended claim 10. Further, **the identical invention, is not “shown in as complete detail”** (or any detail) in Ramakrishnan as contained in amended claim 10.

Therefore, Ramakrishnan does not disclose all aspects set forth in amended claim 10. Accordingly, withdrawal of the rejection of amended claim 10 and its respective dependent claims is respectfully requested.

iii. *Ramakrishnan does not disclose a method that sets programmable parameters when generating IPG values, as in claim 13.*

Claim 13 was rejected under 35 U.S.C. § 102(b) as being anticipated by Ramakrishnan. **Withdrawal of the rejection of amended claim 13 and its respective dependent claims is respectfully requested** for at least the following reasons. As described above, **Ramakrishnan does not “expressly or inherently describe”** setting the ***programmable parameters*** described in amended claim 13 when generating IPG values. Further, **the identical invention, is not “shown in as complete detail”** (or any detail) in Ramakrishnan as contained in amended claim 13.

Therefore, Ramakrishnan does not disclose all aspects set forth in amended claim 13. Accordingly, withdrawal of the rejection of amended claim 13 and its respective dependent claims is respectfully requested.

iv. *51.2 microseconds described in Ramakrishnan is not the same as 1 second, as set forth in amended claim 3.*

Claim 3 was rejected under 35 U.S.C. § 102(b) as being anticipated by Ramakrishnan. **Withdrawal of the rejection of amended claim 3 is respectfully requested** for at least the following reasons. The Office Action alleges that generating the IPG value after a steady state time period of one second is analogous to “a maximum of 51.2 microseconds.” We respectfully disagree with examiner’s understanding this reference. 51.2 microseconds is 51.2 millionths of a second, and the reference claims that to be the maximum delay. In contrast, the (now amended) claim language states the steady state time period to be 1 second. These two time measurements are not analogous at all. Therefore, because Ramakrishnan does not disclose all aspects set forth in claim 3, we respectfully request withdrawal of the rejection of amended claim 3.

- v. ***Ramakrishnan does not disclose or suggest testing IPG values, nor does it disclose or suggest a specified IPG range of 96 to 272 bit times, as set forth in claim 4 and amended claim 5.***

Claims 4 and 5 were rejected under 35 U.S.C. § 102(b) as being anticipated by Ramakrishnan. **Withdrawal of the rejection of claim 4 and amended claim 5 is respectfully requested** for at least the following reasons. The invention of claim 4 and amended claim 5 includes testing a plurality of IPG values, with an IPG value range from 96 to 272 bit times. **Ramakrishnan does not “expressly or inherently describe” testing a plurality of IPG values, nor utilizing an IPG value range from 96 to 272 bit times. Further, the identical invention, that of testing a plurality of IPG values, with an IPG value range from 96 to 272 bit times, is not “shown in as complete detail” (or any detail) in Ramakrishnan as contained in claim 4 and amended claim 5.** The Office Action alleges that, because Ramakrishnan has a formula that calculates IPG values, this is analogous. However, calculating IPG values is not the same as testing values to determine a desired IPG values, using a specified range of values. Therefore, because Ramakrishnan does not disclose all aspects set forth in claim 4 and amended claim 5, we respectfully request withdrawal of the rejection of claim 4 and amended claim 5.

- vi. ***Ramakrishnan does not disclose or suggest using an IPG range, a convergence time, or a stable state time, for generating IPG values or as programming parameters, as set forth in claims 8 and 17.***

Claims 8 and 17 were rejected under 35 U.S.C. § 102(b) as being anticipated by Ramakrishnan. **Withdrawal of the rejection of claims 8 and 17 is respectfully requested** for at least the following reasons. The invention of claims 8 and 17 comprise, an ***IPG range***, a ***convergence time***, and a ***stable state time***, for either generating IPG values or as programming parameters. As described above, **Ramakrishnan does not “expressly or inherently describe” using an IPG range, a convergence time, or a stable state time for these functions. Further, the identical invention is not “shown in as complete detail” (or any detail) in Ramakrishnan, as contained in claims 8 and 17.** The Office Action alleges that, because the formula in

Ramakrishnan calculates IPG values, this is analogous. However, the formula does not include parameters for an IPG range, a convergence time, or a stable state time. Therefore, because Ramakrishnan does not disclose all aspects set forth in claims 8 and 17, we respectfully request withdrawal of the rejection of claims 8 and 17.

vii. Ramakrishnan's disclosure of $9.6+10(N+1)$ is not the same as an initial IPG value of 96 bit times, as set forth in claim 19.

Claim 19 was rejected under 35 U.S.C. § 102(b) as being anticipated by Ramakrishnan. **Withdrawal of the rejection of claim 19 is respectfully requested** for at least the following reasons. The Office Action alleges that because the reference discloses a formula, $9.6+10(N+1)$ that is used to calculate IPG values, this is analogous to an initial setting of the IPG value to 96 bit times, as in claim 19. However, 9.6 is not the same as 96 bit times. We respectfully disagree with examiner's understanding of this reference. The reference does not disclose the purpose of using the constant, 9.6, in its formula, but it is definitely does not disclose or suggest an initial setting of an IPG value to 96 bit times. Therefore, because Ramakrishnan does not disclose all aspects set forth in claim 19, we respectfully request withdrawal of the rejection of amended claim 19.

viii. 51.2 microseconds described in Ramakrishnan is not the same as 60 seconds, as set forth in amended claim 22.

Claim 22 was rejected under 35 U.S.C. § 102(b) as being anticipated by Ramakrishnan. **Withdrawal of the rejection of amended claim 22 is respectfully requested** for at least the following reasons. The Office Action alleges that a stable state time of 60 seconds is analogous to "a maximum of 51.2 microseconds." We respectfully disagree with examiner's understanding this reference. 51.2 microseconds is 51.2 millionths of a second, and the reference claims that to be the maximum delay. In contrast, the (now amended) claim language states the stable state time period to be 60 seconds. These two time measurements are not analogous at all. Therefore,

because Ramakrishnan does not disclose all aspects set forth in claim 22 , we respectfully request withdrawal of the rejection of amended claim 22.

III. REJECTION OF CLAIM 7 UNDER 35 U.S.C. § 103(a)

Claim 7 was rejected under 35 U.S.C. §103(a) as being unpatentable over Ramakrishnan. As discussed above, **we do not concede that Ramakrishnan meets all the limitations of the parent claims.** Therefore, we respectfully request withdrawal of the rejection of claim 7.

Further, it is conceded in the Office Action that “Ramakrishnan does not explicitly disclose the IPG determiner and storage unit being part of a device driver.” However, claim 7 was rejected under 35 U.S.C. § 103(a) as being unpatentable over the Ramakrishnan. Withdrawal of the rejection of claim 7 is respectfully requested for at least the following reasons.

The Office Action alleges that the feature in this claim, wherein the IPG determiner and storage unit being part of a device driver, “would have been obvious ... to include the IPG determining and storage unit as being part of a device driver in order to maintain control of a device accessing a network.” However, the Office Action does not provide an explanation or reference for where the reason for obviousness comes from, therefore it appears official notice has been taken. The MPEP section 2144.03 part B states that when official notice is taken of a fact, unsupported by documentary evidence, the technical line of reasoning underlying a decision to take such notice must be clear and unmistakable. Here, **the cited art of record, the Ramakrishnan reference, and the “Official Notice” taken in the record does not provide any disclosure, detail, or factual findings predicated on sound technical and scientific reasoning that would make this system obvious to one of ordinary skill.** We respectfully disagree with examiner’s understanding of the invention of claim 7. The Office Action alleges that it is obvious to include the IPG determining and storage unit as being part of a device driver in order to maintain control of a device accessing a network. However, the purpose of including the IPG determining and storage unit as

being part of a device driver is not to maintain control of a device accessing a network, as described in the Office Action, but to aid in increasing the processing speed of data packets in the network by giving each device attached to the network the ability to determine IPGs and store them for processing. The nature of the invention in claim 7 is to allow dynamic IPG generation and selection based on the desired parameters, for each device connected to a network, not to maintain control of a device. Therefore, the purpose of the IPG determining and storage unit as being part of a device driver cannot be for the reasons stated in the Office Action. **We do not concede that these features are well known in the art.**

Consequently, **it would not have been obvious** to one of ordinary skill in the art at the time the invention was made to include the IPG determining and storage unit as being part of a device driver, into the Ramakrishnan disclosure. Because no detail or factual findings to the contrary are disclosed in the cited art or in the record, we respectfully request withdrawal of the rejection of claim 7. In the alternate, please provide us with factual findings predicated on sound technical and scientific reasoning that would make this system obvious to one of ordinary skill.

II. REJECTION OF CLAIM 12 UNDER 35 U.S.C. § 103(a)

Claim 12 was rejected under 35 U.S.C. §103(a) as being unpatentable over Ramakrishnan in view of Fellman (US 6,751,231). As discussed above, **we do not concede that Ramakrishnan meets all the limitations of the parent claims.** Therefore, we respectfully request withdrawal of the rejection of claim 12.

Further, it is conceded in the Office Action that “Ramakrishnan does not explicitly disclose tracking throughput and modifying the IPG value to achieve a desired throughput.” However, claim 12 was rejected under 35 U.S.C. § 103(a) as being unpatentable over the Ramakrishnan in view of Fellman. **Withdrawal of the rejection of claim 12 is respectfully requested** for at least the following reasons.

The office action alleges that “Fellman discloses tracking throughput and modifying the IPG value to achieve desired throughput.” The referenced document

does not contain disclosures relating to tracking throughput, nor does it contain disclosures relating to modifying an IPG value. Further, Fellman does not refer to “modifying the back-off protocol,” as described in the Office Action. Even if Fellman did mention “modifying the back-off protocol,” this is not the same as modifying the IPG value, as in claim 12. A back-off protocol is a method by which a network node ends transmission of a data packet when a collision is detected. In contrast, an IPG is an inter-packet gap that is the space (or gap) between data packet transmissions. They are not analogous to each other. Therefore, modifying an IPG value is not the same (or similar) to modifying a back-off protocol.

Therefore, Fellman does not disclose or suggest tracking throughput and modifying the IPG value to achieve desired throughput. Consequently, the combination Ramakrishnan and Fellman does not disclose or suggest the invention set forth in claim 12. Accordingly, withdrawal of the rejection of claim 12 is respectfully requested.

VIII. CONCLUSION

For at least the above reasons, the claims currently under consideration are believed to be in condition for allowance.

Should the Examiner feel that a telephone interview would be helpful to facilitate favorable prosecution of the above-identified application, the Examiner is invited to contact the undersigned at the telephone number provided below.

Should any fees be due as a result of the filing of this response, the Commissioner is hereby authorized to charge the Deposit Account Number 50-1733, AMDP771US.

Respectfully submitted,
ESCHWEILER & ASSOCIATES, LLC

By /Thomas G. Eschweiler/
Thomas G. Eschweiler
Reg. No. 36,981

National City Bank Building
629 Euclid Avenue, Suite 1000
Cleveland, Ohio 44114
(216) 502-0600